

### REMARKS/ARGUMENTS

The Office Action mailed July 21, 2003 has been carefully considered. After such consideration, independent Claims 1, 27, 28, 53 and 54 have been amended to more particularly define the applicant's present invention over the references cited by the Examiner. Specifically, the independent claims have been amended to clarify that the dynamic programming module includes a hashing function having a low probability of collision. As such Claims 1-26; 27; 28-52; 53; and 54 remain in the case with none of the claims being allowed.

Claims 11, 26 and 28 stand objected to minor typographical errors. These errors have been corrected as required by the Examiner.

Claim 1 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 has been amended to overcome the 35 U.S.C. 112 rejection. Specifically, the limitation "to generate a of said plurality of time-dependent tasks" has been amended to read --to generate a **schedule for selecting [of]** said plurality of time-dependent tasks--. Support for this amendment can be found in, for example, in the Specification and in original Claim 28. No new matter has been entered by this amendment.

Claims 1-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Syswerda (U.S. Patent No. 5,319,781). Claims 21-26 and 28-54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Syswerda '781 in view of Oba et al. (U.S. Patent No. 5,241,465). Claim 27 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Oba et al. (U.S. Patent No. 5,241,465) in view of Syswerda '781.

### The Present Invention Is Not Obvious Over The Cited References

The Federal Circuit has ruled on numerous occasions that a holding of "obviousness" requires some motivation, suggestion or teaching within the cited references that would lead one skilled in the art to modify the cited reference or references as claimed by applicant. See, for example, In re Kotzab, 217 F3d 1365, 55 USPQ2d 1313 (Fed Cir. 2000):

"Most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. See *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. See *B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp.*, 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996)."

The Syswerda patent does not disclose, teach or suggest a dynamic programming module that includes a hashing function having a low probability of collision as now required by currently amended independent Claims 1, 27, 28, 53 and 54. Moreover, none of the other cited references including the secondary reference Oba et al. disclose, teach or suggest alone or in combination a dynamic programming module that includes a hashing function having a low probability of collision. Any attempt to modify the scheduling systems taught by the cited references to incorporate the above underlined requirements would be contrary to the teachings of the cited references. Therefore, it is respectfully submitted that independent Claims 1, 27, 28, 53 and 54 along with their dependents, as amended, are patentable over the cited references.

Merely stating that "hashing functions are well known in the computer programming art" does not cure this deficiency in the prior art. While it is true that hashing functions are *per se* known, there is no suggestion that would lead one skilled in the art to apply hashing functions to the present circumstances. Moreover, there is no suggestion of providing a hashing function having a low probability of collision.

The Applicant submits that by this amendment he has placed the case in condition for allowance and such action is respectfully requested. However, if any issue remains

unresolved, Applicant's attorney would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,



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